

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

UNITED STATES OF AMERICA

B-09-CR-1005

VS.

September 29, 2009  
Brownsville, Texas  
11:22 a.m.

GERONIMO SALVADO SANTOS-NUEZ  
Defendant

RE-ARRAIGNMENT

BEFORE THE HONORABLE RONALD MORGAN

UNITED STATE MAGISTRATE JUDGE

APPEARANCES

For the United States

Bill Hagen, AUSA  
U. S. Attorney's Office  
600 E. Harrison  
Suite 201  
Brownsville, Texas 78520  
956.548.2554

For the Defendant

Rudy Rodriguez, AFD  
Assistant Federal Public  
Defender  
600 E. Harrison  
Suite 102  
Brownsville, Texas 78520  
956.548.2573

Court Clerk

Linda Garcia

Interpreter

Sandra Cortez

Proceedings from official electronic sound recording;  
transcript produced by court approved transcriber.

1 Electronic Recording Operator Rita Nieto  
2 600 E. Harrison  
3 Suite 101  
4 Brownsville, Texas 78520  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 (Proceedings through Interpreter.)

2 THE COURT: Good morning.

3 MR. HAGEN: Good morning.

4 MR. RODRIGUEZ: Good morning,

5 THE COURT: Let's call B-09-1005, the United States  
6 versus Geronimo Salvador Santos-Nunez.

7 MR. RODRIGUEZ: Rudy Rodriguez for Mr. Santos-Nuez,  
8 Your Honor.

9 MR. HAGEN: Bill Hagen appearing on behalf of Angel  
10 Castro for the Government. Good morning, Your Honor.

11 THE COURT: Mr. Rodriguez.

12 THE CLERK: Please raise your right hand.

13 (Defendant sworn.)

14 DEFENDANT SANTOS-NUEZ: Yes.

15 THE COURT: Sir, what is your full name?

16 DEFENDANT SANTOS-NUEZ: Geronimo Salvador Santos-  
17 Nunez.

18 THE COURT: And is it - Salvador, is that your  
19 father's name?

20 DEFENDANT SANTOS-NUEZ: Santos.

21 THE COURT: Santos? Okay. All right. Mr. Santos,  
22 you've just taken an oath to tell the truth. What that means  
23 is that if during these proceedings at any time you tell me  
24 something which is not true, then you can be violated for  
25 violating the laws of perjury, that is, prosecuted for

1 violating the laws of perjury. Do you understand that, sir?

2 DEFENDANT SANTOS-NUEZ: Yes, sir.

3 THE COURT: All right. What that means is you just  
4 tell me the truth during the whole proceeding, and there won't  
5 be any problems.

6 Now, Mr. Santos, how old are you, sir?

7 DEFENDANT SANTOS-NUEZ: Thirty-four.

8 THE COURT: How far did you go in school?

9 DEFENDANT SANTOS-NUEZ: Twelfth.

10 THE COURT: Let me back up just for one second, Mr.  
11 Santos. Do you understand the law of perjury as I explained  
12 it to you?

13 DEFENDANT SANTOS-NUEZ: Yes.

14 THE COURT: All right. So, do you read and write  
15 English?

16 DEFENDANT SANTOS-NUEZ: No.

17 THE COURT: Okay. Do you read and write Spanish?

18 DEFENDANT SANTOS-NUEZ: Yes.

19 THE COURT: Is Spanish your primary language?

20 DEFENDANT SANTOS-NUEZ: Yes.

21 THE COURT: Do you understand everything the court  
22 interpreter is telling you through the headphones?

23 DEFENDANT SANTOS-NUEZ: Yes.

24 THE COURT: All right. During these proceedings if  
25 at any time you have any questions because you can't hear what

1 the court interpreter says, or you didn't understand something  
2 that she says, what I want you to do is to raise your hand so  
3 that I can get that clarified for you; do you understand that?

4 DEFENDANT SANTOS-NUEZ: Yes, sir.

5 THE COURT: All right. Now, Mr. Santos have you ever  
6 been in a mental institution and treated for a mental illness  
7 of any sort?

8 DEFENDANT SANTOS-NUEZ: No, sir.

9 THE COURT: Are you taking any medication or are you  
10 under the influence of anything today that would affect your  
11 ability to understand what's going on?

12 DEFENDANT SANTOS-NUEZ: I'm taking medication for  
13 blood pressure, but I'm not taking it right now.

14 THE COURT: Okay. But does that blood pressure  
15 medicine affect your ability to understand what's going on?

16 DEFENDANT SANTOS-NUEZ: Oh, no, not pressure,  
17 depression.

18 THE COURT: Okay.

19 MR. RODRIGUEZ: Depression.

20 DEFENDANT SANTOS-NUEZ: Depression.

21 THE COURT: Depression. Okay.

22 DEFENDANT SANTOS-NUEZ: I'm not taking it anymore.

23 THE COURT: Okay. So you're not taking anything that  
24 would affect your ability to understand what's going on; is  
25 that true?

1 DEFENDANT SANTOS-NUEZ: No.

2 THE COURT: All right. What medications are you  
3 taking today, Mr. Santos?

4 DEFENDANT SANTOS-NUEZ: None.

5 THE COURT: All right. Are you under the influence  
6 of anything - drugs, alcohol or medication - that would affect  
7 your ability to understand what's going on here this morning?

8 DEFENDANT SANTOS-NUEZ: No, none.

9 THE COURT: All right. Mr. Santos, let me explain to  
10 you that I am not the judge who will be finding you guilty,  
11 and I'm not the judge who will be sentencing you if you are  
12 found guilty. Those two acts will be done by Judge - by the  
13 District Court Judge, Judge Tagle. My role today is to  
14 conduct this hearing and if I believe it is warranted to make  
15 a recommendation to the District Judge that she accept your  
16 guilty plea.

17 Now, I have in front of me a form labeled  
18 Consent to Administration of Guilty Plea, in Federal Rule of  
19 Criminal Procedure 11, Allocution by United States Magistrate  
20 Judge. And on this form there is a signature. Can you see  
21 this signature from where you're standing, sir?

22 DEFENDANT SANTOS-NUEZ: Yes, sir.

23 THE COURT: Is that your signature?

24 DEFENDANT SANTOS-NUEZ: Yes, sir.

25 THE COURT: Anyone force you to sign this document?

1 DEFENDANT SANTOS-NUEZ: No, sir.

2 THE COURT: Is it your wish that I conduct this  
3 hearing this morning?

4 DEFENDANT SANTOS-NUEZ: Can you repeat that?

5 THE COURT: Yes. Do you want me to conduct this  
6 hearing this morning?

7 DEFENDANT SANTOS-NUEZ: Yes.

8 THE COURT: All right.

9 Now, Mr. Santos, anyone force you to make - to  
10 agree to having me conduct this hearing?

11 DEFENDANT SANTOS-NUEZ: No, sir.

12 THE COURT: All right. Mr. Santos, I need to explain  
13 some things to you. Under the rights - or under the laws and  
14 Constitution of the United States, you have the right to  
15 remain silent, that is, you don't have to say anything about  
16 the offenses with which you are charged. You have the right  
17 to plead not guilty and require the Government to prove the  
18 charges against you beyond a reasonable doubt. If you plead  
19 guilty, though, you'll have to waive your right to remain  
20 silent, because I have to assure myself that in fact you've  
21 committed the offense with which you are charged. Do you  
22 understand your right to remain silent?

23 DEFENDANT SANTOS-NUEZ: Yes, sir.

24 THE COURT: Now, furthermore, you're also entitled to  
25 be represented by an attorney at all stages of the

1 proceedings, and if you cannot afford one, one will be  
2 appointed for you. You're appearing here this morning with  
3 Mr. Rodriguez. Is Mr. Rodriguez representing you as your  
4 attorney?

5 DEFENDANT SANTOS-NUEZ: Yes, sir. He is.

6 THE COURT: Now, have you met with Mr. Rodriguez?

7 DEFENDANT SANTOS-NUEZ: Yes, sir.

8 THE COURT: And has he - have you discussed the  
9 charges against you?

10 DEFENDANT SANTOS-NUEZ: I have spoken to him enough  
11 to understand the charge.

12 THE COURT: All right. And are you satisfied with  
13 Mr. Rodriguez' help in this case?

14 DEFENDANT SANTOS-NUEZ: Yes, sir.

15 THE COURT: Now, Mr. Santos, as I explained, you have  
16 the right to plead not guilty. And you have a right to have a  
17 trial by jury on the charges against you. And at that trial,  
18 the Government would have to prove the charges against you  
19 beyond a reasonable doubt, and you're entitled to that trial  
20 even if you are guilty. Now, at that trial you would be  
21 presumed innocent. Do you understand that?

22 DEFENDANT SANTOS-NUEZ: Yes, sir.

23 THE COURT: All right. At that trial, the Government  
24 would have to bring in witnesses into court who would come in  
25 and testify in front of you and look you in the eye and be



1 subject to cross-examination by your attorney. Your lawyer  
2 has the right to object to the evidence presented by the  
3 Government, your attorney could present evidence in your  
4 defense if you want to, but he doesn't have - you don't have  
5 to present any evidence. And if you choose not to present any  
6 evidence, that cannot be used against you. You would have the  
7 right to have witnesses be brought into court and testify in  
8 your behalf, if there are witnesses out there who have  
9 something that you want them to say in your favor.

10               You have the right to testify at trial, but you  
11 also have the right not to testify at trial, that is, you can  
12 come in, have your trial, sit at the table, not do anything -  
13 not present evidence, not say anything. And those decisions  
14 cannot be used against you in any fashion. In other words,  
15 your decision to remain silent, your decision not to present  
16 evidence, could not be used to draw a suggestion of guilt  
17 against you. Do you understand that?

18               DEFENDANT SANTOS-NUEZ: Yes.

19               THE COURT: All right. Now, if you continue to plead  
20 guilty and the Court accepts your plea of guilty, there will  
21 be no trial. The Court would simply enter - well -

22               MR. RODRIGUEZ: Your Honor, can we allow him to sit  
23 down? He had an accident on his way here.

24               THE COURT: I was wondering about that - yeah, yeah,  
25 Why don't you do that. Can you lower the -

1 MR. RODRIGUEZ: Yes, sir.

2 THE COURT: -- mike so that - I was wondering if  
3 there was something when he came in.

4 MR. RODRIGUEZ: Yes, Your Honor. He had really  
5 injured his leg when he first got arrested, and he had been on  
6 crutches. He finally got rid of the crutches, sir.

7 THE COURT: All right. Is that better, Mr. Santos?

8 DEFENDANT SANTOS-NUEZ: Yes, yes.

9 THE COURT: All right, you know if there is anything  
10 else that presents itself as a problem as we go through these  
11 proceedings. I don't want you to suffer as a result of this.

12 DEFENDANT SANTOS-NUEZ: Okay. No. It's fine.

13 THE COURT: Now, let me just start back up a little  
14 bit and, that is, I told you about what all your rights are,  
15 but I want you to understand that if you continue to plead  
16 guilty and the Court accepts your plea of guilty there will be  
17 no trial.

18 I want you to know that you will waive and give  
19 up all the rights we've just discussed. The Court will simply  
20 enter a judgment of guilty and sentence you based upon your  
21 guilty plea after considering your pre-sentence report. And  
22 we'll talk about that process in just a minute.

23 Further, by pleading guilty, you are admitting  
24 the charges and all of the facts asserted in the charging  
25 document. You are waiving all defenses to the charges and

1 defects in the proceedings. You are rendering irrelevant all  
2 constitutional claims existing before your plea, the entry of  
3 your plea, and you are consenting to a binding judgment of  
4 conviction and the imposition of an appropriate sentence based  
5 just on your guilty plea. Do you understand that?

6 DEFENDANT SANTOS-NUEZ: Yes, sir.

7 THE COURT: All right. Now, Mr. Santos have you  
8 received a - or seen a copy of the charges that have been  
9 filed against you?

10 DEFENDANT SANTOS-NUEZ: Yes, sir.

11 THE COURT: And have you met with Mr. Rodriguez and  
12 has he explained the charges to you?

13 DEFENDANT SANTOS-NUEZ: Yes, sir.

14 THE COURT: Do you have any questions about those  
15 charges?

16 DEFENDANT SANTOS-NUEZ: No, sir.

17 THE COURT: All right. Let me tell you that you are  
18 charged with violating Title 8, United States Code, Section  
19 1326(a) and (b), and the nature of the offense there is that  
20 number one, you're an alien, that is, a citizen of some  
21 country other than the United States; number two, that you  
22 were previously convicted of what's called an aggravated  
23 felony, that after that aggravated felony you were deported,  
24 excluded or removed from the United States, that after that  
25 deportation, exclusion or removal, you were found to be back

1 in the United States illegally, that you had not obtained the  
2 permission of the Attorney General or the Secretary of the  
3 Department of Homeland Security to enter the United States and  
4 you had not sought for permission from them to enter. And -  
5 do you understand the nature of the offense with which you  
6 have been charged?

7 DEFENDANT SANTOS-NUEZ: Yes, sir.

8 THE COURT: Mr. Rodriguez, have you satisfied  
9 yourself that Mr. Santos is competent and he understands what  
10 he has been charged with?

11 MR. RODRIGUEZ: Yes, Your Honor.

12 THE COURT: Has he been able to assist you in his  
13 defense and that he understands the nature of the charges and  
14 the possible consequences of his plea?

15 MR. RODRIGUEZ: Yes. I've already questioned him,  
16 Your Honor.

17 THE COURT: Now, let me tell you, Mr. Santos, that  
18 the maximum punishment in your case, if the Government can  
19 prove that you were - have a prior conviction for an  
20 aggravated felony which preceded your prior deportation,  
21 exclusion or removal, the maximum punishment includes twenty  
22 years in jail and a \$250,000 fine, and a three-year term of  
23 supervised release, and a one-hundred dollar special  
24 assessment for each count of which you are convicted. Do you  
25 understand the maximum punishment in your case, Mr. Santos?

1           DEFENDANT SANTOS-NUEZ: Yes, sir.

2           THE COURT: Now, Mr. Santos, in addition to those  
3 consequences of your guilty plea, that is, punishment, there  
4 are a couple of others that are called collateral  
5 consequences. And collateral consequences in your case  
6 because you are a citizen of some country other than the  
7 United States, what's going to happen is as soon as you finish  
8 your jail term you should have every expectation that you are  
9 going to be deported, excluded or removed from the United  
10 States. The second thing is, that after that, it is a very  
11 unlikely, if not an absolute certainty, that you will not be  
12 permitted to legally re-enter the United States. Do you  
13 understand those consequences?

14          DEFENDANT SANTOS-NUEZ: Yes, sir.

15          THE COURT: All right. Now, when I told you what  
16 your maximum punishment was I told you what a supervised term  
17 of release - I used the term supervised release term. I need  
18 to explain to you what that is.

19               A supervised release term is a period of time  
20 after serving your sentence of imprisonment when you would be  
21 released from jail and there are some special and some  
22 mandatory conditions. If you violate those conditions while  
23 your supervised release term is still in effect, you could be  
24 sent back to jail for as much as two years, just for violating  
25 one of those conditions, without credit for any time that

1 you've already served on supervised release.

2 Now that sentence to imprisonment - those two  
3 years - would be in addition to any other sentence that you  
4 receive if your violation of those conditions amounted to a  
5 crime. Let me give you an example.

6 After you have served your prison time, you will  
7 be deported. And if you came back into the United States  
8 illegally, that would violate one of the conditions of your  
9 supervised release term. I can guarantee you that. And if  
10 you were then caught or violating the term of your supervised  
11 release, you could go to jail for two years for violating that  
12 supervised release term. But also, you could be sentenced and  
13 convicted for illegally re-entering the United States. So,  
14 one act on your part could subject you to two sentences. Do  
15 you understand that, sir?

16 DEFENDANT SANTOS-NUEZ: Yes, sir.

17 THE COURT: All right. Now, let me talk briefly  
18 about the sentencing guidelines and tell you how that's going  
19 to work. I know that Mr. Rodriguez has met with you and  
20 you've talked about the guidelines and he's explained to you  
21 where he thinks your case might fall and how the guidelines  
22 might apply in your case.

23 What's going to happen next is the Court will  
24 order a pre-sentence investigation. One of the probation  
25 officers will talk to you individually, with your attorney

1 present, and the probation officer will ask you questions  
2 about your background, your family history and your criminal  
3 history. All of that information will then be collected and  
4 used to arrive at a sentencing score. That sentencing score  
5 then translates to a sentencing range in your case. All of  
6 that information is put into a pre-sentence report.

7           The Court will not be able to determine what  
8 your sentencing range actually will be until after the pre-  
9 sentence report has been completed and you have had the  
10 opportunity to comment upon the report. You see, once the  
11 report's been completed, you and your attorney and the  
12 attorney for the Government will have an opportunity to review  
13 the report and comment on the report and you and your attorney  
14 will have the opportunity to identify anything in the report  
15 that you believe is incorrect. And then if there is a good  
16 faith basis for that, at sentencing your attorney can argue  
17 what you think is incorrect.

18           Now, once the Court does determine your  
19 sentencing guideline range, I want you to understand that the  
20 Court has the authority to depart from the advisory  
21 guidelines, and the Court could impose a sentence that could  
22 be more severe or less severe than what is recommended by the  
23 guidelines. Do you understand that, sir?

24           DEFENDANT SANTOS-NUEZ: Yes, sir.

25           THE COURT: Okay. So you understand how the

1 sentencing guidelines and how the pre-sentence report is going  
2 to work and you understand that the Court has the authority to  
3 depart; is that correct?

4 DEFENDANT SANTOS-NUEZ: Yes, sir.

5 THE COURT: All right. Mr. Santos, let me just tell  
6 you also that the federal - parole has been abolished in the  
7 federal system so that if you're sentenced to prison you will  
8 not be released early on parole. Do you understand that?

9 DEFENDANT SANTOS-NUEZ: Yes, sir.

10 THE COURT: All right. Now, Mr. Santos, I've told  
11 you what you've been charged with, we've gone through the  
12 elements of that offense. I've explained to you the possible  
13 sentence that you could receive, we've talked about your  
14 individual rights under the laws and Constitution of the  
15 United States. I've explained to you the fact that by  
16 pleading guilty you're waiving lots and lots and lots of  
17 issues on appeal. We've talked about the sentencing  
18 guidelines and how they're going to work and the Court's  
19 authority to depart from those guidelines after the guideline  
20 range is established. You've indicated that you've understood  
21 everything that we've talked about.

22 Now, knowing everything that could happen to  
23 you, understanding everything that we've talked about, is it  
24 still your wish to plead guilty, Mr. Santos?

25 DEFENDANT SANTOS-NUEZ: Yes, sir.



1 THE COURT: Has anyone forced you, or threatened you,  
2 or promised you anything in any way, to make you plead guilty  
3 this morning?

4 DEFENDANT SANTOS-NUEZ: No, sir.

5 THE COURT: All right. Mr. Santos, do you have any  
6 questions for your attorney before we proceed?

7 DEFENDANT SANTOS-NUEZ: No, sir.

8 THE COURT: All right. Mr. Hagen, re-arraign Mr.  
9 Santos, please.

10 MR. HAGEN: Yes, Your Honor.

11 United States District Court, Southern District  
12 of Texas, Brownsville Division, Criminal Number B-09-1005,  
13 United States of America versus Geronimo Salvador Santos-Nuez  
14 - Nuez, Indictment, the Grand Jury charges: On or about July  
15 25, 2009, in the Southern District of Texas, and within the  
16 jurisdiction of the Court, Defendant Geronimo Salvador Santos-  
17 Nuez, an alien who had previously been denied admission,  
18 excluded, deported and removed after having been convicted of  
19 an aggravated felony, knowingly and unlawfully was present in  
20 the United States, having been found in Cameron County, Texas.  
21 The said Defendant having not obtained consent to re-apply for  
22 admission into the United States from the Attorney General of  
23 the United States and Secretary of Homeland Security, the  
24 successor, pursuant to Title 6, United States Code, Sections  
25 2023, 2024, and 557, in violation of Title 8, United States

1 Code, Section 1326(a) and 1326(b), a true bill, signed by the  
2 foreperson of the Grand Jury.

3 Mr. Santos, do you understand the Indictment  
4 that I've just read to you?

5 DEFENDANT SANTOS-NUEZ: Yes, sir.

6 MR. HAGEN: To this Indictment do you plead guilty or  
7 do you plead not guilty?

8 DEFENDANT SANTOS-NUEZ: Guilty.

9 THE COURT: Now, Mr. Santos, are you pleading guilty  
10 freely and voluntarily?

11 DEFENDANT SANTOS-NUEZ: Yes, sir.

12 THE COURT: Mr. Santos, I want you to listen very  
13 carefully, because the Government is going to say what the  
14 facts are in your case.

15 Mr. Hagen.

16 MR. HAGEN: Your Honor, on July 25, 2009, this  
17 Defendant was found in Cameron County, Texas, by Customs and  
18 Border Protection agents. It was determined that he was an  
19 alien and a citizen of the Dominican Republic, who had entered  
20 the United States illegally. The Defendant had been  
21 previously deported from the United States on June 30, 2008,  
22 after having been convicted of the aggravated felony of  
23 conspiracy to distribute cocaine on February 1 of 2004. The  
24 Defendant had not received consent of the Attorney General or  
25 Secretary of Homeland Security to re-apply for admission into

1 the United States.

2 THE COURT: Now, Mr. Santos, are those the facts of  
3 your case?

4 DEFENDANT SANTOS-NUEZ: Yes, sir.

5 THE COURT: Is that what you did?

6 DEFENDANT SANTOS-NUEZ: Yes, sir.

7 THE COURT: All right. Mr. Rodriguez, do you concur  
8 those are the facts in Mr. Santos' case?

9 MR. RODRIGUEZ: Those are the facts, Your Honor.

10 THE COURT: In that case, Mr. Santos, it is the  
11 finding of this Court that you are fully competent and capable  
12 of entering an informed plea, that you understand and are  
13 aware of the nature of the charges against you and the  
14 consequences of your plea, that your plea of guilty is a  
15 knowing and voluntary plea supported by an independent basis  
16 of fact containing all of the essential elements of the  
17 offense.

18 The Court will render preparation of a report  
19 and recommendation. I will send it to Judge Tagle and  
20 recommend that you be found guilty and sentenced accordingly.

21 Now, these are the dates that are going to  
22 control the future proceedings in your case. The  
23 investigation and preparation of a pre-sentence report shall  
24 be completed by the 12<sup>th</sup> day of November 2009. Counsel shall  
25 file objections in writing to the report, including the

1 alleged facts of the offense and the applicability of the  
2 sentencing guidelines by the 27<sup>th</sup> day of November, 2009. If  
3 there are no objections, a statement to that effect, signed by  
4 counsel and the Defendant, shall be submitted. After further  
5 investigation, the pre-sentence officer shall submit a final  
6 report by the 10<sup>th</sup> day of December 2009. And this case is set  
7 for sentencing on the 7<sup>th</sup> day of January 2010, at one-thirty in  
8 the afternoon before Judge Tagle.

9 Is there anything further that we need to  
10 address?

11 MR. HAGEN: Nothing from the Government, Your Honor.

12 THE COURT: Have I complied with the requirements of  
13 Rule 11, Mr. Hagen?

14 MR. HAGEN: Yes, Your Honor. You have.

15 THE COURT: And Mr. Rodriguez, with respect to Mr.  
16 Santos -

17 MR. RODRIGUEZ: You have, Your Honor.

18 THE COURT: -- have I complied with the requirements  
19 of Rule 11?

20 MR. RODRIGUEZ: You have, Your Honor.

21 THE COURT: In that case, we are in recess. Thank  
22 you very much.

23 MR. RODRIGUEZ: Thank you.

24 (Proceedings concluded at 11:43 a.m.)  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

I, court approved transcriber, certify that the foregoing  
is a correct transcript from the official electronic sound  
recording of the proceedings in the above-entitled matter.

<u>/s/ Linda Griffin</u>	<u>March 13, 2010</u>
Digital Scroll Transcription	Date